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Supreme Court, U.S.
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No. 97-454
In the Supreme Court of the United States
October Term, 1996

UNITED STATES OF AMERICA,

Petitioner,

v.

CPC INTERNATIONAL, INC., et al,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

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ARGUMENT

Respondent, Michigan Department of Environmental Quality ("MDEQ"), formerly known as the Michigan Department of Natural Resources, concurs in the United States' Petition for Writ of Certiorari, as it pertains to seeking review of the United States Court of Appeals for the Sixth Circuit's *en banc* decision regarding the liability of Respondent CPC International, Inc. Respondent MDEQ filed a Petition for Writ of Certiorari on August 8, 1997, seeking review of the liability determination as it relates to CPC International, Inc., Docket No. 97-296.

As set forth in both the United States' and MDEQ's Petitions for Writ of Certiorari, the Court of Appeals decision presents an important question of federal law and a clear conflict between the Courts of Appeals. The issue at hand is whether a parent corporation can be held directly liable as an operator under section 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a)(2), when it was actively and directly involved in operations at the facility, to such an extent that the trial court found that "the evidence of participation and control by CPC exceeded the bounds of an interested investor and entered the realm of active operator". *CPC International Inc. v. Aerojet General Corp.*, 777 F. Supp. 549, 575 (W.D. Mich. 1991); App. to MDEQ Pet. 126a. Both MDEQ's and the United States' Petitions seek review of the fundamental principles of liability under CERCLA; specifically what it means to be an "operator" under CERCLA and how courts should interpret CERCLA's broad definition of "person".

The Court of Appeals interpretation of CERCLA is in direct conflict with five other Courts of Appeals that have found parent corporations directly liable as operators under CERCLA. *See*: *Certain Underwriters at Lloyd's, London v. St. Joe Minerals Corp.*, 90 F.3d 671 (2d Cir. 1996); *Schiavone v. Pearce*, 70 F.3d 248 (2d Cir. 1996); *United States v. TIC Investment Corp.*, 68 F.3d 1082 (8th Cir. 1995), *cert. denied*, ___U.S.___; 117 S. Ct. 50 (1996); *Lansford-Coaldale Joint Water Authority v. Tonolli Corp.*, 4 F.3d 1209 (3d Cir. 1993); *Jacksonville Elec. Auth. v. Bernuth Corp.*, 996 F.2d 1107 (11th Cir. 1993); *John S. Boyd Co. v. Boston Gas Co.*, 992 F.2d 401 (1st Cir. 1993), and

United States v. Kayser-Roth Corp., 910 F.2d 24 (1st Cir. 1990); *but see Joslyn Mfg. Co. v. T. L. James & Co.*, 893 F.2d 80 (5th Cir. 1990).

CONCLUSION

For the reasons set forth above and in MDEQ's Petition for Writ of Certiorari in No. 97-296, Respondent MDEQ respectfully requests that this Court grant the United States' Petition for Writ of Certiorari with respect to Respondent CPC International, Inc. Respondent MDEQ takes no position with respect to Petitioner United States' request that this Court grant its petition with respect to Aerojet-General Corp.

Respectfully submitted,

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